

May 18, 2005

**STATEMENT OF HAROLD JACKSON, PRESIDENT, BUFFALO SUPPLY, INC., TO
THE ACQUISITION ADVISORY PANEL**

Buffalo Supply, Inc. ("BSI") is an award-winning women-owned small business that is a distributor of medical equipment, supplies and related products. BSI holds federal supply schedule ("FSS") contracts with both the General Services Administration ("GSA") and the Department of Veterans Affairs ("VA"). Although BSI conducts business with state and local customers as well as commercial customers, the company – like many federal resellers – predominantly transacts business with customers in the federal marketplace.

For many years, it has been a fundamental procurement policy of the United States – mandated by the Small Business Act -- to encourage small and disadvantaged businesses to participate in government contracting programs such as the FSS program. GSA has worked diligently to maximize small business participation in the FSS program. GSA has acted most notably in the realm of information technology, but also in many other areas of commercial products and services offerings such as medical furniture. Literally hundreds of small businesses serve as resellers of commercial products through FSS contracts and similar vehicles, and those businesses generate millions of dollars in annual sales under such contracts. The competition generated by the participation of numerous small business produces a wide variety of product offerings and cost savings for federal customers and other activities (such as prime contractors and state and local governments) that are eligible in appropriate circumstances to purchase under FSS contracts.

The VA Office of Inspector General ("VA IG"), however, has not been as welcoming of small business participation. In fact, the VA IG has attempted on numerous occasions -- both formally and informally – to prohibit small business resellers from participating in the VA FSS contract program. These activities fly in the face of established law and GSA policy on the subject. And although VA is entitled to administer FSS contracts only under a delegation of procurement authority from GSA – requiring VA to follow established laws and regulations governing the FSS program – VA continues to attempt to inhibit small business participation in the program, to the detriment of these businesses, taxpayers, and government customers, which frequently include critical activities such as military hospitals and combat units.

The VA IG's attack on small businesses commenced over four years ago. In a May 2001 report, the VA IG recommended that distributors (such as BSI) be prohibited from entering into contracts with VA unless they could demonstrate that they were responsible for negotiating and establishing prices for products that the distributors also sold to commercial customers. This limitation was not – and is not --supported by, or consistent with, the laws and regulations that govern the FSS program. In fact, the statute governing the FSS program – enacted as part of the Competition in Contracting Act – requires that the program be open to all responsible sources. And while FSS regulations require resellers to provide sufficient pricing information to ensure that the government receives fair and reasonable prices, those regulations do not in any way seek to limit small business participation as VA has done. Moreover, such a view is inconsistent with

the Veterans Reform Act, which plainly directs VA to contract with the broadest possible range of health-care providers.

Congress carefully reviewed the VA IG's recommendation and rejected it during its consideration of VA procurement reform legislation in 2002. See Attachment 1 (Letter from Hon. Donald Manzullo). Notwithstanding this clear Congressional mandate, VA then began to attempt to implement this policy on an unofficial basis. For example, when BSI began to negotiate a new FSS contract with VA in 2002-03, VA insisted that it would not grant BSI a contract unless it pegged future contract price reductions to those granted by a third-party manufacturer to its commercial customers. Such an action would have been contrary to FSS regulations, policy and contract clauses. When BSI protested, VA simply refused to conclude contract negotiations and rejected BSI's offer. After BSI filed a bid protest with the General Accounting Office challenging this impropriety, VA then finally agreed to negotiate a FSS contract with BSI that omitted the offending provision. In all, BSI spent 44 months negotiating a contract with VA that ordinarily would have taken other small businesses two or three months to negotiate.

The VA IG also has attempted to discourage BSI from participating in the FSS program by repeatedly auditing the company for compliance. BSI does not for a moment deny that audit oversight is an important contract function. We are taxpayers, too. However, the VA IG has subjected BSI to two pre-award audits in the approximately 28 months and one post-award audit. The VA IG has identified no significant compliance issues in those audits. BSI incurred significant internal and legal costs in complying with audit demands during these audits. These costs are very significant burdens to BSI, and have distracted BSI over the past four years from its primary mission -- serving veterans, military customers and the warfighters that those customers support.

The VA IG's activities also have been detrimental to the government customers and the taxpayer. In many instances -- for example, hospital beds -- BSI is one of two suppliers with FSS contracts and hospital stretchers BSI is one of 3 suppliers. BSI's presence on schedule results in competition and lower costs for FSS customers. Had the VA IG been successful in preventing BSI from contracting, many FSS products would have been available from a large manufacturer on only a sole-source basis. It is noteworthy that GSA encourages small business participation in the FSS program; GSA clearly has concluded that-- far from inhibiting price competition -- the presence of hundreds of small business resellers "on schedule" promotes competition, lower pricing, increased value and choice for the government consumer. The use of resellers by medical and information technology manufacturers is also consistent with standard commercial practice; if this practice were prohibited, fewer manufacturers' products will be available to the federal government.

BSI welcomes the Acquisition Advisory Panel to confer with GSA FSS executives in this regard, and to inquire of these GSA executives whether the VA IG's views comport with law, regulation and FSS policy.

In short, BSI urges the Acquisition Advisory Panel to examine carefully the activities of the VA IG in this area. BSI shares the VA IG's concern that FSS contracts reflect fair and reasonable pricing. However, BSI believes that the VA IG's continued campaign against small business participation in the FSS program clearly contravenes law, regulation, FSS policy, and just constitutes bad business.

Harold L. Jackson
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Harold Jackson

From: Harold Jackson
Sent: Tuesday, March 11, 2003 10:08 AM
To: Harold Jackson
Subject: FW: ~~OSDBU~~
OSDBU

-----Original Message-----

From: Simpson, Wayne [mailto:wayne.simpson@mail.va.gov]
Sent: Sunday, February 10, 2002 12:21 PM
To: 'Harold Jackson'; Denniston, Scott; Simpson, Wayne
Subject: RE: Helping you to obtain a GSA Schedules contract

Mr. Jackson:

I hope this e-mail finds you doing well. Thank you for forwarding the information from GSA, your point is well taken.

I want to update you on the status of the VA Inspector General recommendation, whereby a policy would be implemented limiting FSS contracts with distributors to distribution services only.

Regrettably, this recommendation has been included by the VA's Procurement Reform Task Force in their recommendations to the Secretary. As you are aware, we were not included on the task force and had no say in its deliberations. We only recently received the task force's actual recommendations, and had a very short turnaround time to review and comment on them. In responding for our office, Scott Denniston, OSDBU Director, advised that OSDBU did not concur in this recommendation. Mr. Denniston warned of the detrimental and disproportionate impact the recommendation will have on small business concerns. These comments went forth only several days ago and we have heard nothing further.

We want to assure you Mr. Jackson, that we have done everything possible on our end to prevent this recommendation from becoming reality at the expense of small business. However, as you know all too well, our sphere of influence is limited to our role as advocates -- we are not the decision makers or program implementers. Until this matter is finally decided, we will continue to do whatever we can when the opportunity presents itself, to educate key VA leadership and program officials as to the recommendation's adverse impact on small business, hopefully convincing and persuading them to revisit this recommendation before its implementation.

I do not want to raise your hopes or expectations, and frankly believe this is now a long shot at best. Nevertheless, we continue to hope for the best.

Thank you.

Wayne A. Simpson
Deputy Director for Small Business Programs
Office of Small and Disadvantaged Business Utilization
U.S. Department of Veterans Affairs (00SB)
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Washington, DC 20420-0001

DONALD A. MANZULLO, ILLINOIS
CHAIRMAN

NYDIA M. VELÁZQUEZ, New York

Congress of the United States

House of Representatives

107th Congress

Committee on Small Business

2561 Rayburn House Office Building

Washington, DC 20515-6515

July 29, 2002

The Honorable Anthony J. Principi
Secretary of Veterans Affairs
Department of Veterans Affairs
810 Vermont Avenue, N.W.
Washington, D.C. 20420

Dear Secretary Principi:

The Committee on Small Business has actively supported the entrepreneurial efforts of veterans, especially disabled veterans, to start and grow small businesses. This Committee in the 107th Congress has held two oversight hearings concerning the Small Business Administration's treatment of veterans and the success or failure of that agency's programs for veterans. In addition, the Committee has carefully followed the formation and growth of the National Veterans Business Development Corporation, whose success could greatly benefit veterans throughout this Nation. The legislation that created this Corporation was a cooperative effort between the House Committees on Veterans' Affairs and Small Business. We look forward in the future to working with the Committee on Veterans' Affairs and your Department in a continuing and cooperative effort to meet the needs of veterans.

We are writing to you today concerning a matter of importance to small businesses and the maintenance of fairness in the procurement process as administered by your Department. As we are sure you are aware, the House of Representatives last Monday passed H.R. 3645, a bill to provide for improved procurement practices by the Department of Veterans Affairs in procuring health-care items. The bill, as originally introduced, contained a provision, subsection (d)(2) of Section 2, which would have severely limited or eliminated the participation of distributors, a significant portion of whom are small businesses, from bidding on the procurement of health-care items covered by the legislation. Such an anti-distributor provision doesn't make sense from any viewpoint since it is in the interest of any buyer, whether the government or a private sector purchaser, to maximize rather than restrict competition.

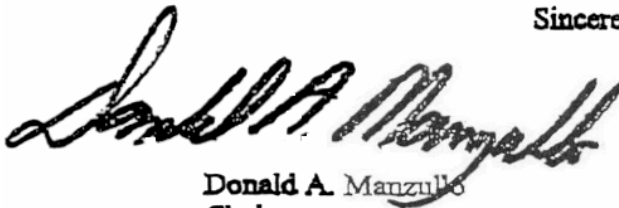
It is our understanding that this particular provision had its origin in a report done by the Inspector General of your Department. However, it would appear that the conclusions reached in this report did not meet with general acceptance in your agency since the Principal Deputy Assistant Secretary for Management, who testified on behalf of your

Department regarding H.R. 3645, opposed the strict mandates imposed by the legislation, including the anti-distributor provisions. Wisely, the House did remove the anti-distributor provisions and they are not in the bill passed last Monday. However, there remains concern within the small business community that there will be an effort in your Department to end run the recent efforts here in the House to maintain fairness in the procurement process. The President in his remarks to the Women Entrepreneurship Summit, in March of this year, sets forth the Administration's small business plan, a major tenant of which is that "government contracting must be more open and fair to small businesses." The language stricken here in the House would have had the opposite result.

Government has a genuine concern that goods and supplies purchased are delivered on time, at a competitive price, and of requisite quality. The procurement process is not designed to dictate to small and large businesses how they should be organized in doing business with the Federal government or in the private sector. This country has achieved its success through a vigorous free enterprise system. Those nations that have relied upon government planners to manipulate their economies have failed. Now is the time to support our free enterprise system and to maintain equity in the government procurement process.

You may be assured that the Committee on Small Business will continue its effort on behalf of the veterans of this Nation. We are sure that under your leadership, the President's standard of more fairness to small businesses in government contracting will be followed.

Sincerely,



Donald A. Manzullo
Chairman



Nydia M. Velázquez
Ranking Democrat